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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

FATEMAH AZIZIAN, SORAYA FARRAH,
EUNICE FEY, ROSE GONZALES, KAZUKO Y.
MORGAN, NICOLA NELSON-TORRES,
MONIQUE PATRICK, JUDITH POGRAN,
PAMELA POWELL, SHIRLEY POWELL, and
ROSE SKILLMAN, on behalf of themselves and
all other similarly situated,

Plaintiffs,

v.

FEDERATED DEPARTMENT STORES, INC.;
THE NEIMAN-MARCUS GROUP, INC.;
NORDSTROM, INC.; THE MAY
DEPARTMENT STORES COMPANY; SAKS
INCORPORATED; GOTTCHALKS INC.;
TARGET CORPORATION; DILLARD'S, INC.;
CLARINS U.S.A., INC.; THE ESTÉE LAUDER
COMPANIES INC.; L'ORÉAL USA, INC.;
CONOPCO, INC.; CHRISTIAN DIOR
PERFUMES, INC.; GUERLAIN, INC.;
PARFUMS GIVENCHY, INC.; CHANEL, INC.;
BOUCHERON (USA) LTD.,

Defendants.

CIVIL NO.

CLASS ACTION

COUNT I

COMPLAINT FOR VIOLATIONS
OF THE SHERMAN ACT

COUNTS II AND III

COMPLAINTS FOR (1) RESTRAINT
OF TRADE AND (2) UNFAIR
COMPETITION

JURY TRIAL DEMANDED ALL
CAUSES OF ACTION

1 Plaintiffs, FATEMAH AZIZIAN, SORAYA FARRAH, EUNICE FEY, ROSE
 2 GONZALES, KAZUKO Y. MORGAN, NICOLA NELSON-TORRES, JUDITH POGRAN,
 3 SHIRLEY POWELL, MONIQUE PATRICK, PAMELA POWELL and ROSE SKILLMAN, on
 4 behalf of themselves and all others similarly situated, bring this action against the above-named
 5 defendants and allege on information and belief as follows:

6 JURISDICTION AND VENUE

7 1. Plaintiffs bring this action under Section 4 and Section 16 of the Clayton Act, (15
 8 U.S.C. §§ 15 and 16) to recover damages and to obtain injunctive relief as allowed by law, costs
 9 of suit and reasonable attorneys' fees for defendants' violations of the federal antitrust laws,
 10 including Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

11 2. This Court has jurisdiction over this action pursuant to Sections 4(a) and 16 of the
 12 Clayton Act and 28 U.S.C. §§ 1331 and 1337.

13 3. Venue is proper in this district pursuant to Section 12 of the Clayton Act, 15
 14 U.S.C. § 22, and 28 U.S.C. § 1391.

15 4. Defendants transact business and are found within the Northern District of
 16 California. The interstate trade and commerce described herein is and has been carried out, in
 17 part, within the Northern District of California, and many of the unlawful acts done in violation
 18 of the Sherman Act have occurred within the Northern District of California.

19 DEFINITIONS

20 5. As used in this Complaint, the following definitions shall apply:

- 21 a. "Department Store Cosmetic Products" means the full range of high-end,
 22 "prestige" or specialty beauty and cosmetic products and product lines
 23 (whether new, established or discontinued), including, but not limited to,
 24 color products, treatments and fragrances which are manufactured and/or
 25 sold by the Manufacturer Defendants (as that term is defined below) or
 26 Department Store Defendants (as that term is defined below) under various
 27 brand names. Department Store Cosmetic Products are sold primarily
 28 through Retail Stores (as that term is defined below), including such stores

1 owned or operated by the Department Store Defendants, who, in turn, sell
2 such products to the Plaintiffs and members of the Class. The term
3 "Department Store Cosmetics" excludes product lines sold principally
4 through mass distribution channels.

5 b. "Department Store Defendants" means Federated Department Stores, Inc.;
6 The Neiman-Marcus Group, Inc.; Nordstrom, Inc.; The May Department
7 Stores Company; Saks Incorporated; Gottchalks, Inc.; Target Corporation;
8 and Dillard's, Inc; each of which purchases Department Store Cosmetics
9 from one or more Manufacturers, including the Manufacturer Defendants,
10 and, in turn, resell such cosmetics to retail customers such as the Plaintiffs.

11 c. "Retail Store" means each company, including but not limited to the
12 Department Store Defendants, which sells Department Store Cosmetics to
13 retail customers such as the Plaintiffs.

14 d. "Manufacturer Defendants" means The Estée Lauder Companies Inc.;
15 L'Oréal USA, Inc.; Conopco, Inc.; Christian Dior Perfumes, Inc.; Guerlain,
16 Inc.; Parfums Givenchy, Inc.; Chanel, Inc.; Boucheron (USA) Ltd.; and
17 Clarins U.S.A., Inc. -- each of which manufacturers or sells Department
18 Store Cosmetics to Retail Stores, including the Department Store
19 Defendants, who, in turn, resell such cosmetics to retail customers such as
20 the Plaintiffs.

21 e. "Manufacturer" means each company, including but not limited to the
22 Manufacturer Defendants, which manufactures and/or sells Department
23 Store Cosmetics to Retail Stores, including the Department Store
24 Defendants, which, in turn, resell such cosmetics to retail customers such
25 as the Plaintiffs.

26 f. "Manufacturer's Suggested Retail Price" (or "MSRP") means the price that
27 a Manufacturer suggests, at any given time, to a Retail Store, as the price
28 at which that Retail Store resells the Manufacturer's Products to retail

customers such as the Plaintiffs.

- g. "Resale Price" means the price at which Department Store Cosmetics are sold to retail customers such as the Plaintiffs, whether or not the price is the same as the MSRP.

THE PARTIES

The Individual and Representative Plaintiffs

6. The Individual and Representative Plaintiffs are: FATEMAH AZIZIAN, SORAYA FARRAH, EUNICE FEY, ROSE GONZALES, KAZUKO Y. MORGAN, NICOLA NELSON-TORRES, MONIQUE PATRICK, JUDITH POGAN, PAMELA POWELL, SHIRLEY POWELL, and ROSE SKILLMAN. During the Class Period, each Individual and Representative Plaintiff purchased Department Store Cosmetics, manufactured or sold by one or more of the Manufacturer Defendants, from one or more of the Department Store Defendants for her personal use and not for resale.

The Department-Store Defendants

7. Defendant FEDERATED DEPARTMENT STORES, INC. ("FEDERATED") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Cincinnati, Ohio. It is a corporation engaged in the retail department store business through divisions that include, but are not limited to Macy's West and Bloomingdale's, which purchase Department Store Cosmetics from the Manufacturer Defendants and others and resell those cosmetics at retail to plaintiffs and members of the plaintiff class.

8. Defendant THE NEIMAN-MARCUS GROUP, INC. ("NEIMAN-MARCUS") is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in Houston, Texas. NEIMAN-MARCUS is engaged in the retail department store business. NEIMAN-MARCUS purchases Department Store Cosmetics from the Manufacturer Defendants and others and resells those cosmetics at retail to plaintiffs and members of the plaintiff class.

9. Defendant NORDSTROM, INC. ("NORDSTROM") is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in

1 Seattle, Washington. NORDSTROM is engaged in the retail department store business.
2 NORDSTROM purchases Department Store Cosmetics from the Manufacturer Defendants and
3 others and resells those cosmetics at retail to plaintiffs and members of the plaintiff class.

4 10. Defendant THE MAY DEPARTMENT STORES COMPANY ("MAY") is a
5 corporation organized and existing under the laws of the State of New York, with its principal
6 place of business in St. Louis, Missouri. MAY is engaged in the retail department store business
7 through its divisions Lord & Taylor and Robinson's May. MAY purchases Department Store
8 Cosmetics from the Manufacturer Defendants and others and resells those cosmetics at retail to
9 plaintiffs and members of the plaintiff class.

10 11. Defendant SAKS INCORPORATED ("SAKS") is a corporation organized and
11 existing under the laws of the State of Tennessee, with its principal place of business in
12 Birmingham, Alabama. SAKS and various of its subsidiaries or affiliates are engaged in the retail
13 department store business. SAKS and various of its subsidiaries or affiliates purchase
14 Department Store Cosmetics from the Manufacturer Defendants and others and resell those
15 cosmetics at retail to plaintiffs and members of the plaintiff class..

16 12. Defendant GOTTSCHALKS INC. ("GOTTSCHALKS") is a corporation
17 organized and existing under the laws of the State of California, with its principal place of
18 business in Fresno, California. GOTTSCHALKS is engaged in the retail department store
19 business. GOTTSCHALKS purchases Department Store Cosmetics from the Manufacturer
20 Defendants and others and resells those cosmetics at retail to plaintiffs and members of the
21 plaintiff class.

22 13. Defendant TARGET CORPORATION ("TARGET") is a corporation organized
23 and existing under the laws of the State of Minnesota, with its principal place of business in
24 Minneapolis, Minnesota. TARGET is engaged in the retail department store business. TARGET
25 purchases Department Store Cosmetics from the Manufacturer Defendants and others and resells
26 those cosmetics at retail to plaintiffs and members of the plaintiff class.

27 14. Defendant DILLARD'S, INC. ("DILLARD'S") is a corporation organized and
28 existing under the laws of the State of Delaware, with its principal place of business in the State

1 of Arkansas. DILLARD'S and its wholly owned or controlled subsidiaries are engaged in the
 2 retail department store business. DILLARD'S purchases Department Store Cosmetics from the
 3 Manufacturer Defendants and others and resells those cosmetics at retail to plaintiffs and
 4 members of the plaintiff class.

5 The Manufacturer Defendants

6 15. Defendant THE ESTÉE LAUDER COMPANIES, INC. ("LAUDER") is a
 7 corporation organized and existing under the laws of the State of Delaware.

8 16. LAUDER, founded in 1946, is one of the world's leading manufacturers and
 9 marketers of Department Store Cosmetics, including skin care, makeup, fragrance and hair care
 10 products. The major trademarks and brand names used in LAUDER's business include Estée
 11 Lauder, Clinique, Aramis, Prescriptives, Origins, Tommy Hilfiger, Donna Karan New York,
 12 M.A.C. and Bobby Brown Essentials.

13 17. On information and belief, defendant FEDERATED accounted for nearly 12% of
 14 LAUDER's net sales, and Defendant MAY accounted for 10% of LAUDER's net sales during
 15 certain years.

16 18. Defendant L'ORÉAL USA, INC. ("L'ORÉAL ") formerly known as COSMAIR,
 17 INC., is a corporation organized and existing under the laws of the State of Delaware. L'ORÉAL
 18 is a wholly owned subsidiary of The Groupe L'Oréal, SA, a French Corporation. L'ORÉAL
 19 manufactures Department Store Cosmetics. L'ORÉAL manufactures or distributes other
 20 Department Store Cosmetics brands such as Lancôme (makeup and skin care), Biotherm (skin
 21 care), as well as the Ralph Lauren and Giorgio Armani brand fragrances.

22 19. Defendant CONOPCO, INC. ("CONOPCO") is a corporation organized and
 23 existing under the laws of the State of New York.

24 20. CONOPCO manufactures or manufactured Department Store Cosmetics,
 25 including the following brand names: (a) Calvin Klein Cosmetics: CK One, CK BE, Escape,
 26 Eternity and Obsession, Calvin Klein Color; (b) Cerrutti: Cerrutti 1881; (c) Chloe: Chloe and
 27 Narcisse; (d) Elizabeth Arden: 5th Avenue, Blue Grass, Red Door, Sunflowers and True Love;
 28 (e) Elizabeth Taylor: Black Pearls, Elizabeth Taylor Passion, and White Diamonds; (f) Jean

1 Louis Scherrer: Indian Night/Nuits Indiennes; (g) Karl Lagerfeld: KL, Lagerfeld, Lagerfeld
2 Classic, Sun Moon Stars, and (h) Valentino: Vendetta.

3 21. Defendant CHRISTIAN DIOR PERFUMES, INC. ("DIOR-US"), is a
4 corporation organized and existing under the laws of the State of New York. DIOR-US is a
5 wholly-owned subsidiary of Christian Dior Parfums SA, ("Dior France"), a French corporation
6 located in France. DIOR-US distributes products manufactured by Dior France in the United
7 States.

8 22. Defendant GUERLAIN, INC is a corporation organized and existing under the
9 laws of the State of New York. GUERLAIN, INC is a wholly-owned subsidiary of Guerlain, SA,
10 a French corporation, which manufactures the product GUERLAIN, INC. distributed in the
11 United States.

12 23. Defendant PARFUMS GIVENCHY, INC. is a corporation organized and existing
13 under the laws of the State of New York. PARFUMS GIVENCHY, INC. is owned by Parfums
14 Givenchy, SA (68%) and LVMH Fashion Group, SA (32%), both of which are French
15 corporations.

16 24. The three defendants named in the above three paragraphs distribute Department
17 Store Cosmetics throughout the United States. For example, DIOR US distributes perfumes and
18 haute couture products under the following brand names: Capture; Dior Make-Up Products: Dior
19 Essence fragrances, Diorissimo fragrances, Eau Savage fragrances, Equite cleansers, Fahrenheit
20 fragrances, Hydra Dior skin care products, Icone skin care products, Miss Dior fragrances,
21 Poison fragrances and Resultante skin care products.

22 25. Defendant CHANEL, INC. ("CHANEL") is a corporation organized and existing
23 under the laws of the State of New York. CHANEL is engaged in the manufacture and marketing
24 of Department Store Cosmetics, including under the following brand names: Anateus Pour
25 Homme, Chanel Beaute, Chanel No. 5 perfume, Chanel No. 19 perfume, Chanel No. 22 perfume,
26 Coco Perfume, Cristalle perfume, Egoiste fragrance and Pour Monsieur fragrance. CHANEL is a
27 wholly owned subsidiary of the French corporation Chanel France, located in France. Chanel
28 France is owned by Chanel International BV, located at Boerhaaven 22, Zoetermeer, Zuid-

1 Holland, The Netherlands 2713 HX.

2 26. Defendant BOUCHERON (USA) LTD. ("BOUCHERON") is a corporation
3 organized and existing under the laws of the State of New York. BOUCHERON manufactures
4 and distributes Department Store Cosmetics, including Boucheron perfume.

5 27. Defendant CLARINS U.S.A., INC. ("CLARINS") is a corporation organized and
6 existing under the laws of the State of New York. CLARINS distributes and markets Department
7 Store Cosmetics.

8 **Co-Conspirators**

9 28. Various others, presently unknown to plaintiffs, participated as co-conspirators
10 with the defendants in the violations of law alleged in this Complaint and have engaged in
11 conduct and made statements in furtherance thereof.

12 **CLASS ACTION ALLEGATIONS**

13 29. Plaintiffs bring this action pursuant to Rules 23(a) and b(3) of the Federal Rules of
14 Civil Procedure on behalf of themselves and the following Class ("the Class"):

15 All persons who currently reside in the United States and who purchased
16 Department Store Cosmetic Products in the United States, which products were
17 manufactured and/or sold by the Manufacturer Defendants or Department Store
18 Defendants, at any time during the period May 29, 1994 through June 1, 2003 (the
19 "Class Period"). Excluded from this Settlement Class are all employees, officers,
20 directors or agents (including attorneys) of any defendant, as well as any judge,
21 justice or judicial officer presiding over this matter, and each such person's
22 immediate family.

23 30. This action has been brought and may be properly maintained as a class action
24 because:

25 (a) The Class is ascertainable and there is a well-defined community of interest among the
26 members of the Class;

27 (b) Based upon the nature of the trade and commerce involved and the number of retail
28 purchasers of Department Store Cosmetics, plaintiffs believe that the members of the Class
number in the millions, and, therefore, joinder of all class members of the Class is not
practicable;

(c) Plaintiffs' claims are typical of the claims of those of the members of the Class

1 because plaintiffs purchased Department Store Cosmetics from one or more of the Department
2 Store Defendants, manufactured by one or more of the Manufacturer Defendants and their co-
3 conspirators, and therefore plaintiffs' claims arise from the same common course of conduct
4 giving rise to the claims of the members of the Class and the relief sought is common to the
5 Class;

6 (d) The following common questions of law or fact, among others, exist as to the
7 members of the Class:

8 (i) whether defendants combined and conspired to fix, raise, maintain or
9 stabilize the prices of Department Store Cosmetics;
10 (ii) whether said combination and conspiracy was implemented;
11 (iii) the operative time period of the combination and conspiracy;
12 (iv) whether the combination and conspiracy is continuing in nature;
13 (v) whether defendants' conduct violates Section 1 of the Sherman Act; and
14 (vi) whether defendants' conduct caused injury to the business or property of
15 plaintiffs and the members of the Class.

16 (e) Questions of law or fact, which are common to the members of the Class,
17 predominate over any questions affecting only individual members of the Class;

18 (f) Plaintiffs will fairly and adequately protect the interests of the Class in that
19 plaintiffs have no interests that are antagonistic to other members of the Class, and they have
20 retained counsel competent and experienced in the prosecution of class actions and antitrust
21 litigation to represent themselves and the Class;

22 (g) A class action is superior to other available methods for the fair and efficient
23 adjudication of this litigation since individual joinder of all damaged Class members is
24 impractical. The damages suffered by individual Class members are relatively small in relation to
25 the expense and burden of individual prosecution of the claims asserted in this litigation. Thus,
26 absent the availability of class action procedures, it would not be feasible for Class members to
27 redress the wrongs done to them. Even if the Class members could afford individual litigation,
28 the court system could not. Further, individual litigation presents the potential for inconsistent or

1 contradictory judgments and would greatly magnify the delay and expense to all parties and to
 2 the court system and, therefore, the class action device presents far fewer case management
 3 difficulties and will provide the benefits of unitary adjudication, economy of scale and
 4 comprehensive supervision by a single court; and

5 (h) In the absence of a class action, defendants would be unjustly enriched because
 6 they would be able to retain the benefits and fruits of their wrongful conduct.

7 TRADE AND COMMERCE

8 31. During the time period covered by this Complaint, various Manufacturers,
 9 including each of the named Manufacturer Defendants, sold and shipped substantial quantities of
 10 Department Store Cosmetics in a continuous and uninterrupted flow of interstate commerce to
 11 Retail Department Stores, including each of the Department Store Defendants, located in states
 12 other than the states in which the Manufacturers are located. The Retail Department Stores, in
 13 turn, resold the Department Store Cosmetics to consumers in the United States.

14 32. The business activities of the various Manufacturers, including each of the named
 15 Manufacturer Defendants, and the Retail Department Stores, including each of the Department
 16 Store Defendants, that are the subject of this Complaint were within the flow of and substantially
 17 affected interstate trade and commerce.

18 THE COSMETICS INDUSTRY

19 33. Department Store Cosmetics' counters generally feature only one cosmetic
 20 Manufacturer's lines per counter. By way of example, the Lauder counter may display "Estée
 21 Lauder," "Clinique" or "Origins" brands, among others, but these are all Lauder-owned brands.
 22 Cosmetics counters are located in areas of the Retail Department Stores where customer traffic is
 23 heavy -- usually the main floor of the Retail Department Stores and generally near the main
 24 entrance, which is the most visible and therefore the most valuable location in any department
 25 store.

26 34. The Department Store Defendants purchase Department Store Cosmetics for
 27 resale and take title to such goods upon receipt thereof. The Manufacturer Defendants pay for
 28 store counters, in-store displays, demonstrations and other advertising, as well as up to 135% of

1 the salaries of cosmetic-counter salespeople, all in return for the Department Store Defendants'
2 agreement to sell at MSRP. The Manufacturer Defendants further guarantee the Department
3 Store Defendants a gross margin equal to 40% of the retail price of the Department Store
4 Cosmetics and the Manufacturer Defendants buy back any unsold Department Store Cosmetics,
5 thus guaranteeing that there will never be any mark-downs of Department Store Cosmetics.
6 Therefore, the Department Store Defendants have none of the usual risks attendant to retail sales
7 unless they deviate from the MSRP.

8 35. Defendants' conduct with respect to the pricing of Department Store Cosmetics
9 reveals that they do not compete on the basis of price with respect to the retail sale of Department
10 Store Cosmetics. Department Store Cosmetics never go on sale. Even though cosmetics are
11 extensively advertised by the defendants, discount prices are never advertised or offered.

12 36. Defendants do not compete on the basis of price or discounts in the retail sale of
13 Department Store Cosmetics and have engaged and continue to engage in acts and
14 practices to prevent price competition in the retail sale of Department Store Cosmetics.

15 **VIOLATIONS ALLEGED**

16 37. Beginning at a time presently unknown to plaintiffs, and continuing
17 thereafter up to and including the date of the filing of this Complaint, the defendants and their co-
18 conspirators entered into and engaged in a continuing contract, combination or conspiracy in
19 unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act (15
20 U.S.C. § 1).

21 38. The contract, combination or conspiracy consisted of a continuing agreement,
22 understanding and concert of action among the defendants and their co-conspirators, the
23 substantial terms of which were to fix, raise, and stabilize the prices of Department Store
24 Cosmetics and to limit the supply of Department Store Cosmetics.

25 39. For the purpose of forming and effectuating their continuing contract,
26 combination or conspiracy, the defendants and their co-conspirators did those things which they
27 contracted, combined or conspired to do, including but in no way limited to the acts, practices
28 and course of conduct set forth above and the following:

- 1 (a) To fix, establish, control or maintain the Resale Price at which any
2 Retail Store may advertise, promote, offer for sale or sell any
3 Department Store Cosmetic Products;
- 4 (b) To require, coerce, or otherwise pressure only Retail Stores to maintain,
5 adopt or adhere to any resale price for any Department Store Cosmetic
6 Products;
- 7 (c) To secure or attempt to secure any commitment or assurance from any
8 Retail Store concerning the resale price at which the Retail Store may
9 advertise, promote, offer for sale or sell any Department Store Cosmetic
10 Products;
- 11 (d) To limit the amount of Products that any Retail Store may purchase at one
12 time or in any single order from any Manufacturer;
- 13 (e) To limit the number or dollar amount of Department Store Cosmetic
14 Products that may be purchased from any Retail Store at one time by any
15 single retail customer;
- 16 (f) *To establish, in connection with any gift-with-purchase, purchase*
17 *with-purchase or similar promotion of Department Store Cosmetic*
18 *Products (collectively "Promotion"), the "qualifying amount," i.e., the*
19 *amount which the retail customer pays in order to receive the benefit (e.g.,*
20 *the gift or additional purchase) associated with the Promotion;*
- 21 (g) To limit the number of Department Store Cosmetic Products that may be
22 given or sold by a Retail Store to any single retail customer in connection
23 with a Promotion, regardless of whether the customer has paid in excess of
24 the qualifying amount;
- 25 (h) To prohibit any Retail Store from advertising any Manufacturer's Products
26 at a price other than MSRP;
- 27 (i) To prohibit a Promotion of a Manufacturer on the same date(s) as a
28 Promotion by that same Manufacturer at another Retail Store;

(j) To prohibit a Promotion of one Manufacturer on the same date(s) another Manufacturer is having a Promotion at another Retail Store;

(k) To prohibit a Promotion of one Manufacturer on the same date(s) another Manufacturer is having a Promotion at the same Retail Store.

EFFECTS

40. The contract, combination or conspiracy had the following effects, among others:

(a) Retail prices charged by defendants and their co-conspirators for Department Store Cosmetics were fixed, raised, maintained or stabilized at artificially high and supra-competitive levels; and

(b) Competition for the sale of Department Store Cosmetics in the United States was unreasonably restrained.

DAMAGES

41. As a direct and proximate result of defendants' unlawful conduct, plaintiffs and the members of the class have been injured in their business and property in that they paid more for Department Store Cosmetics than they otherwise would have paid in the absence of defendants' unlawful conduct. In addition, the illegal conduct alleged herein is continuing and, unless restrained, defendants will continue to engage in such conduct.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment against defendants as follows:

42. Declaring this action to be certified and approved as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the Class as defined herein;

43. That the unlawful combination and conspiracy alleged herein be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1);

44. That plaintiffs and the Class recover damages, as provided by law, and that joint and several judgment in favor of plaintiffs and the Class be entered against defendants and each of them in an amount to be trebled in accordance with the antitrust laws;

45. That plaintiffs and the Class recover their costs of this suit, including reasonable

1 attorneys' fees, as provided by law;

2 46. That plaintiffs be entitled to prejudgment interest pursuant to section 4 (a) of the
3 Clayton Act;

4 47. That each of the defendants, co-conspirators, successors, assigns, parents,
5 subsidiaries, affiliates and transferees, and their respective officers, directors, agents and
6 employees, and all other persons acting or claiming to act on behalf of defendants or in concert
7 with them, be permanently enjoined and restrained from, in any manner, directly or indirectly,
8 continuing, maintaining or renewing the combinations, conspiracy, agreement, understanding or
9 concert of action, or adopting or following any practice, plan, program or design having similar
10 purpose or effect in restraining competition; and

11 48. That plaintiffs and the Class be granted such other and further relief as the nature
12 of the case may require or as may seem just and proper to this Court.

13 **JURY TRIAL DEMANDED**

14 Plaintiffs demand a trial by jury of all issues so triable in this case.

15 **COUNTS II AND III**

16 Pursuant to the Supplemental Jurisdiction of this Court under 28 U.S.C. §1367, plaintiffs
17 above-named bring the following causes of action:

18 **JURISDICTION AND VENUE**

19 49. Plaintiffs bring this action pursuant to Section 16750(a) of the California
20 Business and Professions Code, to recover treble the damages that plaintiffs and the members of
21 the class, as defined, have sustained due to violations by the named defendants and their
22 co-conspirators of Section 16720 of the California Business and Professions Code (the
23 "Cartwright Act"). Plaintiffs' claims also are brought pursuant to Sections 17203 and 17204,
24 California Business and Professions Code, to obtain restitution from the defendants due to their
25 violations of Section 17200 of the California Business and Professions Code (the "Unfair
26 Competition Act").

27 50. Venue as to each defendant is proper in this judicial district pursuant to the
28 provisions of Sections 16750(a) and 17203 of the Business and Professions Code and Sections

1 395(a) and 395.5 of the California Code of Civil Procedure. Each defendant either maintains an
2 office, transacts business, has an agent or is found in the various counties set forth in the
3 Complaint. Plaintiffs' causes of action arose in part within the various counties alleged and each
4 defendant is subject to the jurisdiction of this Court. The unlawful conduct undertaken pursuant
5 to the combination or conspiracy alleged has a direct effect on consumers within the State of
6 California including the various counties alleged, and the trade and commerce described below is
7 carried on within the State of California, as well as within those counties alleged.

8 51. Both causes of action are brought and may be properly maintained as a class
9 action pursuant to Section 382 of the California Code of Civil Procedure.

10 COUNT II

11 (For Violations of the Cartwright Act)

12 52. Plaintiffs incorporate by reference paragraphs 5 through 48 of the First Count of
13 this Complaint, as though fully set forth at length in this paragraph.

14 53. Beginning at a time presently unknown to plaintiffs and continuing thereafter up
15 to and including the date of the filing of this Complaint, defendants and co-conspirators entered
16 into and engaged in a continuing, unlawful trust in restraint of the trade and commerce in
17 violation of Section 16720, California Business and Professional Code. Defendants, and each of
18 them, have acted in violation of Section 16720 to fix, raise, stabilize and maintain prices of
19 Department Store Cosmetics at supra-competitive levels.

20 54. As a direct and proximate result of defendants' unlawful conduct, plaintiffs and
21 the members of the class have been injured in their business and property in that they paid more
22 for Department Store Cosmetics than they otherwise would have paid in the absence of
23 defendants' unlawful conduct. In addition, the illegal conduct alleged herein is continuing and,
24 unless restrained, defendants will continue to engage in such conduct. As a result of defendants'
25 violation of Section 16720 of the California Business and Professions Code, plaintiffs seek treble
26 damages, equitable relief and costs of suit, including reasonable attorney fees, pursuant to
27 16750(a) of the California Business and Professions Code and such similar laws.

28 COUNT III

(For Violations of the Unfair Competition Act)

55. Plaintiffs incorporate by reference paragraphs 5 through 48 of the First Count of this Complaint, as though fully set forth at length in this paragraph.

56. Beginning on a date unknown to plaintiffs, defendants committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq.* of the California Business and Professions Code.

57. This Complaint is filed and these proceedings are instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from these defendants for acts, as alleged herein, that violated Section 17200 of the California Business and Professions Code, commonly known as the Unfair Competition Act and such similar laws.

58. The defendants' conduct as alleged herein violates Section 17200. The acts, omissions, misrepresentations, practices, and non-disclosures of defendants, as alleged herein, constituted and constitute a common continuous and continuing course of conduct of unfair competition by means of unfair, unlawful and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Section 17200, *et seq.*, including, but in no way limited to, the following:

- (a) The violations of Section 16720, *et seq.* of the California Business and Professions Code, set forth above;
- (b) Defendants' acts, omissions, misrepresentations, practices and non-disclosures, as described above, whether or not in violation of Section 16720, *et seq.* of the California Business and Professions Code, and whether or not concerted or independent acts, are otherwise unfair, unconscionable, unlawful or fraudulent;
- (c) Violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45(a));
- (d) Defendants' acts and practices are unfair to consumers in the State of California and other states and territories within the meaning of Section

17200, California Business and Professional Code; and

(e) Defendants' acts and practices are fraudulent or deceptive within the meaning of Section 17200 of the California Business and Professions Code.

59. Plaintiffs and the Plaintiff Class are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits which may have been obtained by defendants as a result of such business acts or practices and enjoining defendants to cease and desist from engaging in the practices described herein.

60. The illegal conduct alleged herein is continuing and there is no indication that defendants will not continue such activity into the future.

61. The unlawful and unfair business practices of defendants, and each of them, as described above, have injured and present a continuing threat of injury to members of the public in that defendants' conduct has restrained and continues to restrain competition, has caused and continues to cause plaintiffs and the members of the Class they represent to pay supra- competitive and artificially-inflated prices for Department Store Cosmetics, and has made it likely that members of the public have been and will continue to be deceived with respect to the manner in which the prices charged for Department Store Cosmetics have been set.

62. The conduct of defendants as alleged in this Complaint violates Section 17200 of the California Business and Professions Code.

63. *As alleged in this Complaint, defendants and their co-conspirators have* been unjustly enriched as a result of their wrongful conduct and by defendants' unfair competition. Plaintiffs and the members of the Class are accordingly entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits which may have been obtained by defendants as a result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204.

64. The illegal conduct alleged herein is continuing and, unless restrained, defendants will continue to engage in such conduct.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and the members of the Class, pray for judgment against defendants, jointly and severally, as follows:

65. Determining that this action may proceed and be maintained as a class action;

66. On the second count:

(a) For damages according to proof at trial, and that such amount be trebled;

(b) For reasonable attorneys' fees pursuant to Section 16750(a) of the California Business and Professions Code;

(c) For prejudgment interest at the highest legal rate, from and after the date of service of the initial Complaint in this action.

67. On the third count:

Ordering defendants, and each of them, their agents and employees, and all persons acting, directly or indirectly, in concert with them, to restore all funds to each member of the class acquired by means of any act or practice declared by this Court to be unlawful or to constitute unfair competition under Sections 17200, *et seq.* of the California Business and Professions Code;

68. For costs of suit;

69. For such other and further relief as the Court may deem just and proper.

Dated: July 17, 2003.

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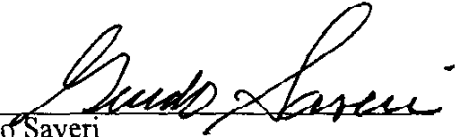
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